

§ 1437.11

7 CFR Ch. XIV (1–1–10 Edition)

Adjustment Manual (LAM) and applicable FCIC crop handbooks. Report the size, number, and location of the areas in any manner of written correspondence received in the FSA administrative county office, no later than 15 calendar days after requesting a deferred appraisal and before the acreage is put to another use or replanted. Representative sample areas must be of adequate construction and numbers to provide acceptable sampling results and maintained in sound condition, as determined by CCC, until released by CCC.

(5) If possible, be present for the appraisal involving un-harvested crop acreage and accept or contest the results of the loss adjustor's appraisal. Producers unable to be present for the appraisal may contest the results of the appraisal in the FSA administrative county office.

(e) For the 2005 and subsequent crop years, crop acreage for which an application for coverage has been filed, that is intended for production of forage seed and for which a notice of loss is filed indicating the crop acreage will not be harvested as seed, will be appraised for potential production of seed when producers provide CCC acceptable evidence of a contract to produce seed for the current crop year or acceptable records of acreage and seed production for three or more of the last 5 consecutive crop years, as determined by CCC.

(f) Forage acreage for which a notice of loss is filed that was intended to be mechanically harvested but will be grazed and not mechanically harvested, or that was intended to be grazed but will be mechanically harvested and not grazed, does not require an appraisal or release of crop acreage.

(g) Producers must apply for payments prior to the earlier of the:

(1) Date an application for coverage is filed for the crop for the subsequent crop year; or

(2) Application closing date for the crop for the subsequent crop year.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13743, Mar. 17, 2006]

§ 1437.11 Average market price and payment factors.

(a) An average market price will be used to calculate assistance under this part and will be:

(1) A dollar value per the applicable unit of measure of the eligible crop;

(2) Determined on a harvested basis without the inclusion of transportation, storage, processing, marketing, or other post-harvest expenses, as determined by CCC;

(3) Comparable with established FCIC prices; and

(4) Determined, as practicable, for each intended use of a crop type within a State, as determined by CCC, for a crop year.

(b) For these purposes, where needed, an Animal-unit-days (AUD) value will be based on the national average price of corn and the daily requirement of 13.6 megacalories of net energy for maintenance of 1 animal unit.

(c) Payment factors will be used to calculate assistance for crops produced with significant and variable harvesting expenses that are not incurred because the crop acreage was prevented planted or planted but not harvested, as determined by CCC.

(d) An adjusted market price will be calculated based on the provisions in this section and others as may apply. A final payment price will be determined by multiplying, as appropriate, the average market price by the applicable payment factor (*i.e.*, harvested, unharvested, or prevented planting) by 55 percent or, by multiplying the applicable AUD (as adjusted, if adjusted) by 55 percent.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13744, Mar. 17, 2006]

§ 1437.12 Crop definition.

(a) For the purpose of providing benefits under this part, CCC will, at its discretion, define crops as specified in this section.

(b) CCC may separate or combine types and varieties as a crop when specific credible information as determined by CCC is provided showing the crop of a specific type or variety has a significantly different or similar value when compared to other types or varieties, as determined by CCC.

(c) CCC may recognize two or more different crops planted on the same acreage intended for harvest during the same crop year as two or more separate crops. The crop acreage may include a

crop intended for harvest before planting of a succeeding crop or a succeeding crop interseeded with the preceding crop prior to intended harvest of the preceding crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by CCC, and all crops are recognized by CCC as able to achieve the expected yield, as determined by CCC.

(d) CCC may consider crop acreage that is harvested more than once during the same crop year from the same plant as a single crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by CCC.

(e) CCC may consider each planting period of multiple planted acreage as a separate crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by CCC.

(f) CCC may define forage as separate crops according to the intended method of harvest, either mechanical harvest or grazed.

(g) Forage acreage intended to be grazed may be further defined as warm and cool season forage crops.

(h) Forage acreage intended to be mechanically harvested may be defined as a separate crop from grazed forage and may be separated based upon the commodity used as forage, to the extent such separation is allowed under paragraph (b) of this section.

(i) Crop acreage intended for the production of seed may be considered a separate crop from other intended uses, as determined by CCC, if all the following criteria apply:

(1) The specific crop acreage is seeded, or intended to be seeded, with an intent of producing commercial seed as its primary intended use;

(2) There is no possibility of other commercial uses of production from the same crop without regard to market conditions; and

(3) The growing period of the specific crop acreage is uniquely conducive to the production of commercial seed and not conducive to the production of any other intended use of the crop, (e.g. vernalization in a biennial crop such as carrots and onions) and that accommodation renders the possibility of pro-

duction for any other intended use of the crop improbable.

§ 1437.13 Multiple benefits.

(a) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or payments under this part, but shall not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same loss.

(b) The limitation on multiple benefits in paragraph (a) of this section shall not apply in any respect to Emergency Loans under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 *et seq.*).

(c) The restriction on multiple benefits does not relieve the producer from the requirements of making a production and acreage report.

(d) If the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the administrative FSA office from which the payment was received.

§ 1437.14 Payment and income limitations.

(a) NAP payments shall not be made in excess of \$100,000 per person per crop year under this part.

(b) NAP payments shall not be made to a person who has qualifying gross revenues in excess of \$2 million for the most recent tax year preceding the year for which assistance is requested. Qualifying gross revenue means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income for the taxable year from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income for the taxable year from all sources.